

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 3:16-cv-2814-S-BN
)
0.2853 ACRES OF LAND, MORE OR)
LESS, LOCATED IN DALLAS COUNTY,)
STATE OF TEXAS; CB TITTLE, LTD.)
and AR1 LAND, LTD.; ET AL.,)
)
Defendant.)

**DEFENDANTS CB/TITTLE, LTD.'S AND AR1 LAND, LTD.'S ANSWER TO UNITED
STATES' AMENDMENT TO THE COMPLAINT WITH DECLARATION OF TAKING**

Defendants CB/Tittle, Ltd. and AR1 Land, Ltd. ("Defendants") file this Answer to the United States' ("Plaintiff") Amendment to the Complaint with Declaration of Taking pursuant to Rule 71.1(f) of the Federal Rules of Civil Procedure.

ANSWER

1. Defendants object to Plaintiff's Notice of Filing Amendment to the Complaint with Declaration of Taking (Dkt. No. 80) and its Amendment to the Declaration of Taking (Dkt. No. 81.) ("Amended Declaration") as it fails to name an interest holder in the property being acquired by and through the Amended Declaration. Specifically, TXU Generation Company L.P. or its successor in interest has an easement interest in the property being condemned in Plaintiff's Amended Declaration.

2. Defendants object to Plaintiff's Amended Declaration as it injects a new taking of additional property from Defendants. Plaintiff's Amended Declaration is a new eminent

domain proceeding to acquire additional property from Defendants. Pursuant to Rule 71.1(e)(2), Defendants object to Plaintiff's Amended Declaration and request that the court sever the Amended Declaration from this proceeding and treat this Amended Declaration as a new case with a new cause number pending in this court for the following reasons:

- a. Plaintiff's original Complaint in Condemnation (Dkt. No. 1) and Declaration of Taking (Dkt. No. 4) was a "quick-take" proceeding ("2016 Land Acquisition"). Title to the subject property vested in Plaintiff when Plaintiff deposited estimated compensation in the registry of the court on October 26, 2016. *See* 40 U.S.C. § 3114.
- b. Plaintiff's Amended Declaration is a "straight-condemnation" proceeding. Title to the access easement will not vest in Plaintiff until Plaintiff tenders payment to Defendants. *United States v. 2,175.86 Acres of Land, More or Less, Situated in Hardin & Jefferson Cty., State of Tex.*, 696 F.2d 351, 356 (5th Cir. 1983), *aff'd sub nom. Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 104 S. Ct. 2187, 81 L. Ed. 2d 1 (1984) (citing *Danforth v. United States*, 308 U.S. 271, 60 S. Ct. 231, 84 L. Ed. 240 (1939) (A taking did not occur until payment was made where the government proceeded by a petition for condemnation, because title did not pass to the government until the landowner had received compensation)).
- c. Trying these separate acquisitions together invites confusion and unfairly prejudices Defendants, who will be required to present evidence of just compensation for two separate takings on two different dates.

d. Plaintiff's Amended Declaration is condemning additional property that was not contemplated or omitted by accident or mistake from the 2016 Land Acquisition.

e. The Amended Declaration is untimely in that it was filed more than 30 months after this proceeding was initiated.

f. Severing Plaintiff's Amended Declaration from the current proceeding will eliminate this confusion completely and will not prejudice Plaintiff.

Respectfully submitted,

VASSALLO & SALAZAR, P.C.

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Attorneys for Defendants
CB/Tittle, Ltd. and AR1 Land, Ltd.

CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1, counsel for Defendants, Eddie Vassallo, Charles A. Salazar, and Timothy J. Reidy, conferred with Daniel W. Kastner and Devin A. Wolak, counsel for Plaintiff, regarding the merits of severing the Amended Declaration, via teleconference on May 8, 2019. The parties continue to confer regarding severance.

/s/ Charles A. Salazar
CHARLES A. SALAZAR

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2019, a true and correct copy of the foregoing *Defendants CB/Tittle, Ltd.'s and AR1 Land, Ltd.'s Answer to United States' Amendment to the Complaint with Declaration of Taking* was served via the methods indicated to:

Daniel W. Kastner
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/s/ Charles A. Salazar
CHARLES A. SALAZAR